interim continuance of the second and third respondents' activities, that is, to complete the sale of these lands." And conversely if the respondents succeeded at the trial, they would not be adequately compensated by the appellants' undertaking as to damages because the interlocutory injunction imposed would deprive the third respondent of "the immediate use of the lands which they had paid for."

With respect there are two factual errors in this reasoning. In the first place the injunction was not sought to prevent the completion of the sale; this having been completed; but it was sought in order to prevent the second respondent from freely dealing with the proceeds of the sale in its hands as it wished. In the second place the interlocutory injunction was not intended to restrain the third respondent from entering upon the estate or otherwise using it, nor would it have such effect. There seems to be a confusion of facts somewhere.

If the test of adequate compensation is to be taken, the appropriate question which should be framed is this. In the event of the appellants succeeding at the trial of the suit, would they be adequately compensated by payments of damages for whatever injury which might have been caused to them by the second respondent's freedom to use the money in the meantime, and also would the second respondent be at that time in a financial position to pay them? But looking at the facts of this case, we do not think that this test is applicable here because there is no continuance of violation of the appellants' right in the meantime which requires protection. Whereas in the *American Cyanamid's* case there was such continuance. In that case the appellants sued the respondents for a permanent injunction on the ground that the respondents were violating the appellants' patent right by selling certain pharmaceutical products and in the meantime until final determination of the dispute the appellants applied for an interlocutory injunction restraining the respondents from selling and marketing the products. There was thus a right, i.e. patent right though in dispute, which required to be protected. In the present case there is no such continuous breach of the appellants' right, but there is this question of funds, being the proceeds of the sale of the first respondent's estate in the hands of the second respondent which the appellants claim, should be accounted for and paid to them. In the circumstances we consider that the test of adequate compensation for damages adopted by the learned judge is wholly inappropriate as it is not applicable to facts in this case. We think that the proper factor to be taken into consideration in determining where the balance of convenience lies is the financial ability of the second respondent to make available to the court those proceeds as and when it so orders. If the appellants succeed at the trial, there is a possibility that they may not be able to enjoy the fruits of their success if these proceeds are not secured by an injunction and order sought for because by the time the trial will have been completed, the second respondent might have been insolvent, and might no longer be in a position to have that much money, or it may even be liquidated. It is in order to prevent this sort of situation from occurring that the interlocutory injunction was asked for. After all the test of adequate compensation by the award of damages or undertaking to pay damages is not the only test envisaged by Lord Diplock in weighing the balance of convenience. His Lordship said:

> "... It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to attached to them. They will vary from case to case."

Finally in taking the approach stated above, we must consider whether the second respondent is likely to be prejudiced by this injunction and order. We observe that the proceeds in the hands of the first respondent are already secured by agreement to be placed on fixed deposit; whilst the part that is meant for the real property gains tax is held by the solicitors of the second respondent. It is only the proceeds in the hands of this respondent which are not secured and we are now called upon to decide what to do with them in the meantime. Having regard to the suit between the parties and to other proceeds having been secured, we cannot see how the second respondent would be in any way prejudiced by the injunction and the payment of such proceeds to court as prayed. On the other hand the appellants would be greatly prejudiced if the second respondent is allowed to use the money in the meantime. There is always the possibility of the second respondent becoming insolvent and unable to make the proceeds available by the time the suit is finally determined.

Although the function of an appellate court with regard to the exercise of discretion by a judge in granting or refusing an interlocutory injunction is one of review only and we must defer to the judge's decision in the matter, we however feel justified in this case in overruling the decision of the court below because we are of the opinion that the learned judge's exercise of discretion in setting aside the interlocutory injunction and order previously made by Anuar J. was based upon a misunderstanding of the law and the facts before him (see Lord Diplock in *Hadmor Productions Ltd. & Ors.* v. *Hamilton & Anor.*[2]). Such misunderstanding led him to take into consideration questions which ought not to be considered as they are not justified by the facts in this case.

We thus allowed the appeal with costs.

Appeal allowed.

Solicitors: *Skrine & Co; Ho Thian Cheh & Co.*

PERBADANAN KEMAJUAN NEGERI SELANGOR v. TEO KAI HUAT BUILDING CONTRACTOR

[F.C. (Suffian L.P., Syed Othman & Abdul Hamid F.JJ.)
February 3 & March 31, 1982]
[Kuala Lumpur – Federal Court Civil Appeal No. 35 of 1979]

Tort – Detinue – Conversion – Damages – Assessment of damages.

In this case the respondents were the owners of certain machinery including a hoist and cement mixers and were sub-contractors to the main contractors who had a contract with the appellants for the construction of houses at Sungei Way, Subang. The appellants terminated the contract of the main contractors on October 6, 1976 as a result of which the sub-contract between the respondents and the main contractors was also terminated. It was alleged that the appellants wrongfully refused to permit the respondents to remove the machinery and wrongfully deprived them of the same. The appellants also made use of the machinery. The respondents claimed for loss of use of the machinery, for an order for delivery up by the appellants of the machinery and damages for detention and/or con-

version. The learned trial judge ordered the appellants to pay the respondents a sum of $63,771.62 as general damages and a sum of $71,280 as special damages. The appellants appealed.

Held: (1) an examination of the respondent's claim discloses that the action was founded in the main upon an allegation that there was wrongful detention of the machinery by the appellants and this arose as a result of the appellant's refusal to allow the respondents to remove the machinery. The respondents' claim was substantially founded not on conversion but in detinue;

(2) as the machinery and equipment had been left on the site for quite some time and they were not in working condition, the learned judge had not acted erroneously when he chose to award damages instead of ordering the return of the machinery;

(3) the respondent was entitled to obtain as damages the value of the machinery and equipment at the date of the wrongful refusal by the appellants. In the circumstances and on the materials before the court, it would have been proper for the learned judge to determine first the value of the machinery as at the date of the judgment i.e. on August 10, 1978 and then to award that sum to the respondents and in addition a further sum representing the fall in value for the period between the wrongful detention and the date of judgment. On this basis the award for the value of the machinery including the fall in value should be $55,730;

(4) damages for loss of hire at the market rate should be awarded to the respondents for the period between the date of wrongful refusal by the appellants and the date of judgment. On this basis the award should be for $61,280.

Cases referred to:–

(1) *General and Finance Facilities Ltd.* v. *Cooks Cars (Romford) Ltd.* [1963] 2 All E.R. 314.

(2) *Rosenthal* v. *Alderton & Sons Ltd.* [1946] K.B. 374, C.A.

FEDERAL COURT.

Lloyd Fernando for the appellants.

Matthias Chang for the respondents.

Cur. Adv. Vult.

Abdul Hamid F.J.: Perbadanan Kemajuan Negeri Selangor is dissatisfied with the decision of Harun J. who ordered them to pay the respondents Teo Kai Huat Building Contractor a sum of $63,771.62 being general damages and a sum of $71,280 as special damages.

On December 21, 1977, the respondents applied by way of summons-in-chambers for the appellants' defence to be struck out and liberty to enter judgment against the appellants. On August 10, 1978, Harun J. made an order striking out the defence and a further order that a date for assessment of damages be fixed by the Senior Assistant Registrar. On January 24, 1979, the learned judge awarded damages as aforesaid. Hence the appeal.

The facts, not seriously in dispute, are that the respondents are the owners of:–

i) 3 units – 12 H.P. Air-cooled Diesel Driven Concrete Hoist (Model IMMACO TA-2)
Serial Nos: 3809 SL217
7409161
7508171

ii) 2 units – Liner 1250 KG. Dumper
Engine Nos: 2000–ST1–A24
72–ST1–A24

iii) 1 unit – 77 Winget PH1 Concrete Mixer
Engine No: 55916

iv) 1 unit – 14 T Winget PH2 Concrete Mixer Engine No: 37410

v) 1 unit – 7TH/L Winget Concrete Mixer
c/w 6.6 Lister
Engine Nos: 1321–LD2–Z18.

Under the agreement dated June 1, 1975, the respondents were sub-contractors of Messrs. Pribumi Sdn. Bhd. (the main contractors) who had a contract with the appellants for the construction of 234 units of link houses at Sungei Way Subang. On October 6, 1976, the appellants terminated the contract with Messrs. Pribumi as a result of which the sub-contract between the respondents and Pribumi was also terminated.

The respondents alleged that the appellants wrongfully refused to permit them to remove the machinery and wrongfully deprived them of the same. They also alleged that the appellants wrongfully detained the machinery in consequence of which they suffered loss and damage. Accordingly they claimed for loss of use of the machinery; for an order for the delivery up by the appellants of the machinery and damages for detention and/or conversion.

At the hearing of the appeal, Mr. Fernando counsel for the appellants argued that this was essentially a claim in detinue and the correct measure of damages should therefore be in detinue. On the other hand, Mr. Matthias Chang for the respondents argued that the claim was for conversion and the correct measure of damages should be for conversion.

To begin with, we shall determine (a) whether this was a claim founded upon an action in detinue or for wrongful conversion and (b) in either case what is the correct measure of damages.

The evidence reveals that upon the termination of the contract between the appellants and the main contractors and consequently the respondents and the main contractors, the appellants refused to allow the respondents to remove the machinery and thereafter wrongfully detained them. This is not denied by the appellants. An examination of the respondents' claim discloses that the action was founded, in the main, upon an allegation that there was wrongful detention of the machinery by the appellants and this arose as a result of the appellants' refusal to allow the respondents to remove the machinery. We have said "in the main" because the respondents have made an alternative claim for damages for conversion in the prayer to the statement of claim. No specific allegation is however made in the body of the statement of claim. In our view the respondents' claim was substantially founded not on conversion but in detinue.

It is in evidence that the respondents were deprived of the use of the machinery. It is also in evidence that the appellants made use of the machinery during the period of wrongful detention. Our determination would therefore revolve on the question of the correct measure of damages to be applied.

The appellants have contended that the respondents' claim was a claim of detinue. We have dealt with that question in so far as it seems to us to emerge from the pleadings. The appellants have also contended that the correct measure of damages should be damages in detinue. We shall consider this question shortly. Counsel for the appellants drew our attention to the fact that the respondents had claimed for the return of the machinery and the learned judge should therefore have ordered for their return and damages should only be awarded in respect of the detention of the machinery.

Before we deal with the measure of damages, we would observe that the respondents did pray for the return of the machinery and no such order was made by the learned judge instead he awarded damages. We have not had the benefit of the learned judge's grounds of decision but judging from the evidence available it is significant to note that the valuation report dated January 3, 1979 (D4) prepared by the Regional Director of Valuation and produced at the hearing for the assessment of damages shows that all the machinery and equipment had been left on site for quite some time and they were not in working condition. They could no doubt be repaired and resold. It is in evidence that on April 5, 1978, the appellants offered to return the machinery to the respondents but according to the respondents they could not be used and were therefore useless to them. It must also be stressed that the offer was only made some 1½ years after the appellants had wrongfully detained and used the machinery. Viewed in this light we are unable to say that the learned judge had acted erroneously when he chose to award damages instead of ordering the return of the machinery. What we must determine is whether the learned judge was right in his assessment of the damages.

At this point we would observe that there is a significant factor that emerges from the record, namely, the wrongful use by the appellants of the machinery during the period of detention. It is in evidence, and this is not disputed, that the appellants did use the machinery during that period, however, for how long and to what extent it is not quite clear. The appellants assumed that they had the right to use the machinery and this is evident from the statement of the defence as well as the affidavit affirmed by Abdul Aziz bin Ismail, Secretary of the appellants. It can also be gathered from the valuation report made by the Director of Valuation that the appellants took over the machines in their existing state and carried on using them. In this regard the respondents' counsel also drew the learned judge's attention to this fact. The evidence therefore discloses quite clearly that the condition of the machines and equipment as the Director of Valuation found them to be was attributable directly to and mainly on account of the wrongful use by the appellants.

We now turn to consider the question of the correct measure of damages. Before we do so, it would be useful to examine briefly the law to find support for our finding that the respondents' claim was substantially a claim in detinue.

With reference to an action in detinue, *Bullen & Leake* 12th Edn: No. 5 has stated at page 358 that –

"An action lies for the specific recovery of personal chattels wrongfully detained from the person entitled to the possession of them, and also for damages occasioned by the wrongful detainer (3 Bl. Com. 151). The technical name of this action is 'Detinue'. The gist of the action is the wrongful detention of goods, and, in general, therefore, it is an action for a wrong independent of contract, and is founded on tort (see *Bryant* v. *Herbert* (1878) 3 C.P.D. 389); there must be 'some definite act or deliberate withholding as a necessary preliminary to the arising of this cause of action' (*Clayton* v. *Le Roy* [1911] 2 K.B. 1031 at 1048)."

And at page 359 speaking of right of action it is stated that –

"To support the action, the plaintiff must have the right to the immediate possession of the goods at the time of commencing the action, arising out of an absolute or a special property; The injurious act being the wrongful detention of the goods, and not the original taking or obtaining of the possession, it is immaterial whether they were obtained by the defendant by lawful means, as by a bailment or finding, or by a wrongful act, as by a trespass or conversion. The usual evidence of the detention is that the defendant, having the possession or control over the goods, does not deliver them to the plaintiff when demanded (*Jones* v. *Dowle* (1841) 9 M. & W. 19). Where there was neither demand nor refusal, no action lay (*Clayton* v. *Le Roy, ante*)."

On the question of relief claimed and the measure of damages, it is stated also at page 359 as follows –

"As to the measure of damages for detinue where the chattels detained by the wrong doer are normally let out on hire by their owner, see *Strand Electric Co.* v. *Brisford Entertainments* [1952] 2 Q.B. 246; *Capital Finance Co. Ltd.* v. *Bray* [1964] 1 W.L.R. 323. The damages may include not only those for the original wrongful detention, but also damages for all subsequent wrongful detention until redelivery (*Serrao* v. *Noel* (1885) 15 Q.B.D. 549, 559). Special damages may also be recovered if properly claimed. Damages must be assessed at the date of judgment and not at the date of refusal (*Rosenthal* v. *Alderton & Sons Ltd.* [1946] K.B. 374)"

In this regard we would refer to the judgment of Diplock L.J. (as he then was) in *General and Finance Facilities, Ltd.* v. *Cooks Cars (Romford), Ltd.*[1] where at page 317, he said that –

"There are important distinctions between a cause of action in conversion and a cause of action in detinue. The former is a single wrongful act and the cause of action accrues at the date of the conversion; the latter is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and continues until delivery up of the goods or judgment in the action for detinue. ... Demand for delivery up of the chattel was an essential requirement of an action in detinue and detinue lay only when at the time of the demand for delivery up of the chattel made by the person entitled to possession the defendant was either in actual possession of it or was estopped from denying that he was still in possession."

Further at page 318 he went on to say that –

"The action in conversion is a purely personal action and results in a judgment for pecuniary damages only. The judgment is for a single sum of which the measure is generally the value of the chattel at the date of the conversion together with any consequential damage flowing from the conversion and not too remote to be recoverable in law ...

On the other hand, the action in detinue partakes of the nature of an action *in rem* in which the plaintiff seeks specific restitution of his chattel. At common law it resulted in a judgment for delivery up of the chattel or payment of its value as assessed, and for payment of damages for its detention."

In the same case Diplock L.J. also dealt with the forms of judgment in an action in detinue and at page 319 said –

"In the result an action in detinue today may result in a judgment in one of three different forms: (i) for the value of the chattel as assessed and damages for its detention; or (ii) for return of the chattel or recovery of its value as assessed and damages for its detention; or (iii) for return of the chattel and damages for its detention. A judgment in the first form is appropriate where the chattel is an ordinary article in commerce, for the court will not normally order specific restitution in such a case, where damages are an adequate remedy (see *Whiteley, Ltd.* v. *Hilt*)."

The learned judge chose the first form of judgment when he awarded damages to the respondents evidently to represent the value of the machinery and damages for the wrongful detention and also special damages for loss of use during the period of wrongful detention. Against that the appellants contended that in so doing the learned judge acted erroneously. We hardly think so in the light of the reasons we have adverted to earlier. But where we think the learned judge has erred is in his assessment of damages per-

taining to (a) the damages for the value of the machinery and its fall in value and (b) the special damages for the wrongful use by the appellants during the period of wrongful detention.

First, the value of the machinery: we do not exactly know how the learned judge arrived at a sum of $63,771.62. Counsel for the appellants urged upon us to assess the value at $34,180 representing a fall in value calculated on the basis of $55,730, the value as at October 6, 1976 (the date of wrongful refusal by the appellants) less $21,550, the value as at April 5, 1978 (the date of the offer by the appellants to re-deliver the machines). The appellants also urged upon us to award only this sum and no other, or, alternatively, a sum of $51,660 representing the market rate for the hire of the machinery worked out as follows:–

(18 months up to date of re-delivery April 5, 1978)

2 units x $540 x 18:	$16,200
2 units x $330 x 18:	$11,880
1 unit x $360 x 18:	$ 6,480
1 unit x $510 x 18:	$ 9,180
1 unit	$ 5,980
HIRE:	$51,660

The appellants submitted that in an action in detinue the value of the goods to be paid to the respondents in the event of the appellants failing to return the goods to the respondents must be assessed at the date of the verdict or judgment in the respondents' favour and not at the date of the refusal (see *Rosenthal* v. *Alderton & Sons Ltd.*[2]) This case was referred to by Diplock L.J. in the case of *General and Finance Facilities, Ltd.* v. *Cooks Cars (Romford), Ltd., supra.*

Close examination of *Rosenthal* v. *Alderton & Sons Ltd.* reveals that apart from the value of the goods to be assessed at the date of the judgment, a plaintiff may also recover damages in respect of the wrongful detention between the date of the refusal and the date of the actual return or the date of the payment of the value. In the judgment of the court read by Evershed J. at page 378, it is stated that –

"The significance of the date of the refusal of the plaintiff's demand is that the defendant's failure to return the goods after that date becomes and continues to be, wrongful. Moreover, the plaintiff may recover damages in respect of the wrongful 'detention' after that date, e.g., where the plaintiff has suffered loss from a fall in value of the goods between the date of the defendant's refusal and the date of actual return (see *William* v. *Archer*), and such damages must equally continue to run until the return of the goods or (in default of return) until payment of their value."

Applying the principles to the present case, it seems necessary to determine, firstly, the value of the machinery and equipment at the date of the wrongful refusal by the appellants. The evidence adduced by the respondents through Tengku Haizam Ahmed, the chartered surveyor who prepared the report (Ex. P1), provides no assistance whatever as no value is given as at that date. Tengku Haizam admitted that he did not know the value of the machinery in October 1976 as it was difficult to assess in retrospect without personal inspection. The report put in evidence by the appellants through the Regional Director of Valuation, however, after giving an allowance for the depreciation, provides a figure of $55,730 as the value of the machinery on October 6, 1976. In arriving at this figure he took into consideration the fact that the concrete mixers, namely items 1, 2 and 3, were purchased by the respondents as refurbished machinery and the rest were new. He also gave a figure of $14,880 as the value of the machinery on January 24, 1979, some six months after the date of the judgment (August 10, 1978). The figure arrived at by the Regional Director of Valuation seems fair and reasonable and we consider it to be a fair assessment. The report was prepared after he inspected the machinery and he took into consideration in his report various factors such as the cost of replacement now, annual depreciation, the fact that the respondents had used the machinery for approximately a year after they were acquired up to October 6, 1976 and also the fact that the appellants had used the machines and equipment after the date of their refusal to deliver them to the respondents. It is our view that in the circumstances and on the materials before us, it would have been proper for the learned judge to determine first the value of the machinery as at the date of judgment, i.e. on August 10, 1978 and then to award that sum to the respondents and, in addition, a further sum representing the fall in value for the period between the wrongful detention and the date of the judgment. Calculated on that basis and using the figure submitted by the appellants, i.e. the sum of $21,550 as on April 5, 1978 to be the value as at the date of judgment a further sum of $34,180 representing a fall in value, the total figure $55,730 should have been awarded, even if a lower value is assessed for the machines and equipment as at the date of judgment, the total sum would still be the same. We have assessed in this manner because we are unable to obtain a figure to represent the value as at August 10, 1978 and would accept for purposes of this case the sum of $21,550 as the value of the machinery as at that date. Therefore the award for the value of machinery including the fall in value is reduced to $55,730 and to that extent we allow the appeal and make an order accordingly.

Secondly, there is a claim by the respondents for the loss of use. We are of the view that damages for loss of hire at the market rate should be awarded to the respondents but the assessment shall have to be for a period between the date of wrongful refusal by the appellants and the date of judgment, i.e., as at August 10, 1978. In this regard we cannot accept the appellants' calculation and the proper sum to be awarded to the respondents shall therefore be calculated over a period of 22 months as follows:–

(22 months up to the date of judgment, i.e., on August 10, 1978)

2 units x $450 x 22:	$19,800.00
2 units x $330 x 22:	$14,520.00
1 unit x $360 x 22:	$ 7,920.00
1 unit x $510 x 22:	$11,220.00
1 unit x $360 x 22:	$ 7,920.00
	$61,280.00

The respondents are clearly disentitled to receive the charges for a period beyond the date of judgment as on that date they are already awarded not only the value of the machinery but also for the fall in value. Accordingly we would allow this appeal by reducing the sum awarded by the learned judge in respect of loss of use from $71,280 to $61,280.

Finally, there remains this sum of $2,477.62 being the agreed value of the diesel engine for item 8(ii) which we have to add to the damages awarded for the value of this machinery. The total sum for the value of the machinery

shall therefore be a sum of $24,027.62 ($21,550 + $2,477.62).

For reasons we have stated the appeal is therefore allowed with costs.

Appeal allowed.

Solicitors: *Zain & Co.; Suhaimi, Khor, Zulkifli & Chang.*

DIRECTOR GENERAL OF INLAND REVENUE v. MAMOR SDN. BHD.

[F.C. (Wan Suleiman Ag. C.J. (Malaya), Syed Othman & Abdul Hamid F.JJ.) September 7, 1981; May 14, 1982]
[Johore Bahru – Federal Court Civil Appeal No. 237 of 1979]

Revenue Law – Income Tax – Whether sums received from extraction and sale of timber from land were chargeable to income tax, development tax and timber profit tax – Finding of facts by Special Commissioners – Whether High Court can interfere – Income Tax Act, 1967, ss. 2 & 4.

This was an appeal from the decision of the High Court reported in [1981] 1 M.L.J. 117. The facts as found by the Special Commissioners were as follows. The respondent company was incorporated in 1968. Its objects among other things were to carry on the business of planters and cultivators of and dealers in all kinds and descriptions of produce and to carry on business as timber merchants, sawmill proprietors, etc. Either of these two objects or any of the objects specified in the Memorandum of Association may be pursued by the respondent as an independent object either alone or in conjunction with all or any one or more of the other objects.

In 1968 the Johore State Government was contemplating a scheme to alienate State land to the private sector for development. In August 1968 the news was published in the newspapers that the Government would alienate 42,000 acres of virgin land in the district of Kluang and Sungai Pengali on a 99 year lease for the scheme. Successful applicants would be given 7,000 acres for the development of oil palm. The applicants would be required to surrender 1,500 acres from the 7,000 acres when they are fully planted with oil palm to the Johore State Development Corporation. The State Development Corporation would realienate the 1,500 acres to small-holders.

The respondent was one of the successful applicants. He was informed of the approval by the State Government by way of notice dated November 30, 1968. The respondent was allotted a parcel of virgin jungle land described as Block 6 comprising an area of approximately 7,000 acres in the Mukim of Nyior in the district of Kluang, for development into oil palm plantation subject to payment of various charges and to certain terms and conditions as stipulated in the notice. As one of the terms and conditions the respondent would be given the right to extract timber from the land and the respondent was required to enter into an agreement with the State Government with regard to the extraction of timber from the land.

Following this the respondent entered into an agreement with the State Government on June 1, 1969. On January 3, 1970 the respondent entered into an agreement with Syarikat Kilang Papan Low Nam Hui Sdn. Bhd. to extract the timber from the land. On September 22, 1969 an area of approximately 50,000 acres which included Block 6 was de-gazetted as a forest reserve.

The respondent was given the logging licence in April, 1970 and commenced logging operations on July 20, 1970.

The Special Commissioners also found that during the relevant basis periods in respect of which assessment of income tax, timber profit tax and development tax were made only two blocks of 1,000 acres each were exploited. Each block was divided into sub-blocks of 250 acres each.

The question submitted for consideration by the Special Commissioners was whether the sums received by the respondent from the extraction and sale of timber from the said land for the relevant basis periods were sums received in the course of development of the said land into an oil palm plantation and were capital receipts and not income from a separate business of timber operators carried on by the respondent, or were on the other hand income chargeable to income tax, development tax and timber profit tax. The Special Commissioners found firstly that the sums received from the extraction and sale of timber from the land were income chargeable to income tax, development tax and timber profit tax and secondly there were two separate and distinct activities, the extraction and sale of timber from the said land and the development of the said land into an oil palm estate. Such extraction and sale of the said timber, they found, constituted the carrying on of the business of timber operators under section 4(a) of the Income Tax Act, 1967.

On appeal to the High Court, the learned Judicial Commissioner, on the facts as found by the Special Commissioners, drew what he considered were reasonable inferences therefrom, and came to the conclusion that the extraction and sale of timber and the development of the land into an oil palm plantation were really one activity for the purpose of income tax. In consequence he held that the sums received by the respondent from the extraction and sale of timber were received in the course of developing the land as an oil palm plantation and therefore not subject to tax. The Director-General of Inland Revenue appealed. The grounds of appeal were in substance that the learned Judicial Commissioner had erred in law in (i) reversing the finding of fact and the decision of the Special Commissioners that the respondent was carrying on two different activities, and (ii) in holding that the income from the extraction of timber was capital income, that is sums received in the development of the land into an oil palm plantation, and therefore not chargeable to tax.

Held: (1) where there is ample evidence, as there was in this case, for the Special Commissioners to consider, the decision of the Special Commissioners must be treated as final. It matters not that on the same evidence, the appeal court might not if it were its province to decide have come to the same decision;

(2) in this case the respondent was properly held to be chargeable under section 4(a) of the Income Tax Act, 1967, by the Special Commissioners.

Cases referred to:

(1) *U.H.G.* v. *Director-General of Inland Revenue* [1974] 2 M.L.J. 33.
(2) *Edwards* v. *Bairstow and Harrison* [1956] A.C. 14.
(3) *Chua Lip Kong* v. *Director-General of Inland Revenue* [1982] 1 M.L.J. 235.
(4) *E.* v. *Comptroller of Inland Revenue* [1970] 2 M.L.J. 117.
(5) *International Investments Ltd.* v. *Comptroller General of Inland Revenue* [1979] 1 M.L.J. 4.
(6) *American Leaf Blending Co. Sdn. Bhd.* v. *Director-General of Inland Revenue* [1979] 1 M.L.J. 1.
(7) *Rutledge* v. *Commissioners of Inland Revenue* 14 T.C. 490.
(8) *Inland Revenue* v. *Livingston* [1927] S.C. 251, 255.

FEDERAL COURT.

Mokhtar Sidin, Senior Federal Counsel, (*Zulkifli bin Ahmad Makinuddin,* Federal Counsel, with him) for the appellant.

Michael Wong (*C. Dass* with him) for the respondent.

Cur. Adv. Vult.

Wan Suleiman Ag. C.J. (Malaya) (delivering the judgment of the Court): The Mamor Sendirian Berhad, the respondent in this appeal had earlier appealed to the Special Commissioners of Income Tax (hereinafter referred to as the Special Commissioners) against assessment of income tax, timber profit tax and development tax.

The question submitted for consideration by the